S.B. CIVIL MISC. APPEAL NO 810/2006
(Smt.Dagri & ors. Vs. Surendra Kumar & others)

DATED : 05.07.2006.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Vineet Jain for the appellants.

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By way of this appeal the claimant-appellants seek to challenge the award dated 09.01.2006 made by the Motor Accident Claims Tribunal, Pali in Claim Case No.175/2003; and seek enhancement over the compensation of Rs.4,32,200/- awarded by the Tribunal on account of accidental death of Shanker Lal, husband of appellant No.1, father of appellants No.2 to 9 and son of appellants No.10 and 11.

Brief relevant facts are that on 10.09.2003 at about 6.15 p.m. the deceased Shanker Lal accompanied by one Mana Ram was riding a Moped bearing Registration No. RJ 7M 6300 going towards Mill Gate, Pali; the Moped was hit by a tanker bearing Registration No. RJ 22G 0355; and Shanker Lal died because of the injuries sustained in the accident. The claimant-appellants claimed compensation from the driver, owner and insurer of the offending tanker account of death of

Shanker Lal stating his age at 30 years and his income at Rs.5100/- per month as a skilled mason.

The Tribunal found the accident to have occurred for rash and negligent driving of the aforesaid tanker that resulted in death of Shanker Lal and held the respondents liable for compensation.

Taking up quantification of compensation, the Tribunal considered the evidence led by the claimants in proof of the income of the deceased and found that the claimant A.W.2 Smt. Dagari deposed that the deceased was working as a skilled mason and earning about Rs. 5000-6000/- per month; A.W. 1 Mana Ram deposed that the deceased was working as mason with a contractor Sikander Bhai; and A.W. 3 Pukh Raj deposed that the deceased had worked with him and was paid Rs. 170/- per day, being a skilled mason. The said witness produced payment certificate Ex. 67 showing the wages of the deceased at Rs. 150/- per day. In view of such uncertain nature of the evidence adduced by the claimants, and in the overall circumstances the Tribunal took the income of the deceased at Rs.2,700/- per month on the basis of wages @ 90/- per day and took the dependency of the claimants at Rs.1,800/- per month. Looking to the age of the deceased the Tribunal applied a multiplier of 17 and thereby calculated pecuniary loss at Rs.3,67,000/-. The Tribunal also awarded

Rs.5,000/- as funeral expenses and Rs.60,000/- as non-pecuniary compensation including loss of consortium to the wife and loss of love, affection, guidance and services for the other claimants. The Tribunal has, therefore, made an award of Rs.4,32,200/- in favour of the claimants and allowed them interest @ 6% per annum from the date of filing of the claim application.

Learned counsel appearing for the appellants has vehemently urged that looking to the job the deceased was proficient at and engaged in, that is of a skilled artisen, and looking to his age and his future prospects, the amount awarded by the Tribunal remains too low and deserves suitable enhancement. Learned counsel also submitted that the Tribunal has seriously erred in awarding interest only @ 6% per annum.

Having examined the considerations adopted by the Tribunal and the award in its totality, this Court is satisfied that this appeal remains bereft of substance and deserves to be dismissed.

The deceased was about 30 years of age and has been shown working as a skilled mason, but not in any settled employment. The Tribunal has taken his income at Rs.2700/- per month in view of uncertain nature of evidence and such estimation cannot be said to be falling too low than a

reasonable estimation. Learned counsel has contended that there is no basis for the Tribunal to adopt such figure of income of the deceased. Suffice is to say that when the evidence adduced by the claimants is of uncertain nature and no definite proof of income being available, the Tribunal was required to and has rightly made a reasonable estimation in order to arrive at a figure of just compensation. Moreover, the Tribunal has applied the multiplier of 17 after taking the dependency of the claimants at Rs.1800/- per month and has arrived at a pecuniary loss figure of Rs.3,67,200/-. The Tribunal has further liberally allowed non-pecuniary compensation at Rs.10,000/- to the wife and Rs.5000/- each to other claimants, in all Rs.60,000/-. Further, Rs.5000/- has been allowed towards funeral expenses. The award made by the Tribunal cannot be said to be too low than the figure of just compensation; and any claim for enhancement thereto does not sound justified. The Tribunal has of course awarded interest only @ 6% per annum but in the circumstances of the case and looking to the amount awarded, such choice of interest rate cannot be said to be on the lower side.

Having regard to overall facts and circumstances of the case, this Court is clearly of the opinion that the impugned

award cannot be said to be inadequate or unjust so as to warrant any interference in appeal.

In this view of the matter, there is no ground to admit this appeal and the same is, therefore, dismissed summarily.

[DINESH MAHESHWARI], J.

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